

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION

WALTER CHAPLIN,)
v. Plaintiff,) Civil Action No. 5:12cv30028
v.)
DANIEL MAAS, et al.,) By: Michael F. Urbanski
Defendants.) United States District Judge

ORDER

This matter was referred to the Honorable B. Waugh Crigler, United States Magistrate Judge, pursuant to 28 U.S.C. § 636(b)(1)(B), for proposed findings of fact and a recommended disposition. The magistrate judge filed a report and recommendation on February 1, 2013, recommending that defendants' motion to dismiss be granted with respect to the claims against Officer Daniel Maas and denied with respect to the claims against Deputy Joe Tyree and Sheriff Randall Fisher; recommending that defendants' motion for summary judgment be denied as moot as to the claims against defendant Maas and granted in part and denied in part as to the claims against defendants Tyree and Fisher; and recommending that defendants Maas and Fisher be dismissed from this action. Defendants and plaintiff filed objections to various portions of the report and recommendation.

The court has carefully reviewed the magistrate judge's report, all objections to the report, the pertinent portions of the record, and the relevant legal authority and, in so doing, made a de novo determination of those portions of the report to which objections were made. The court concludes that the magistrate judge's report is substantially correct. Accordingly, the court **ADOPTS** the magistrate judge's recommendation in its entirety.

It is therefore **ORDERED** and **ADJUDGED** as follows:

1. Defendants' motion to dismiss (Dkt. # 9) is **GRANTED in part** and **DENIED in part** as follows:
 - a. Defendants' motion to dismiss is **GRANTED** as to plaintiff's claims against defendant Maas;
 - b. Defendants' motion to dismiss is **DENIED** as to plaintiff's claims against defendants Tyree & Fisher;
2. Defendant Maas is hereby **DISMISSED** from this action;
3. Defendants' motion for summary judgment (Dkt. # 11) is **GRANTED in part** and **DENIED in part** as follows:
 - a. Defendants' motion for summary judgment is **DENIED as moot** with respect to the claims against defendant Maas;
 - b. Defendants' motion for summary judgment on failure to exhaust grounds is **DENIED** with respect to the claims against defendants Tyree and Fisher;
 - c. Defendants' motion for summary judgment is **GRANTED** as to plaintiff's state law gross negligence claim raised against defendants Tyree and Fisher, because the claim is barred by the applicable statute of limitations;
4. Defendant Fisher is hereby **DISMISSED** from this action.

The Clerk is directed to send a certified copy of this Order to counsel of record.

Entered: March 26, 2013

ts/ Michael F. Urbanski

Michael F. Urbanski
United States District Judge